

# The Corporation of the City of North Bay

## By-Law 2018-84

### A By-Law to Establish a Municipal Accommodation Tax

**Whereas** section 400.1 of the *Municipal Act, 2001*, SO 2001, c 25 (the "Act") provides that a local municipality may pass by-laws imposing a tax in respect of the purchase of transient accommodation in the municipality;

**And Whereas** pursuant to section 400.1 of the Act and Ontario Regulation 435/17 made under the Act, the Council of The Corporation of the City of North Bay wishes to establish a tax rate and to levy the tax on the purchase of transient accommodation within the City of North Bay;

**And Whereas** section 400.1(3) of the Act, sets out the terms for which the by-law may provide;

**And Whereas** pursuant to section 400.4 of the Act, Council may establish enforcement measures as Council considers appropriate if an amount assessed for outstanding tax, penalties or interest remains unpaid after it is due;

**And Whereas** section 400.5 of the Act provides that a municipality may enter into agreements with another person or entity providing for the collection of taxes imposed under section 400.1 of the Act, and for the administration and enforcement of the by-law;

**And Whereas** at its meeting of September 4, 2018, Council approved the establishment of the Municipal Accommodation Tax to be imposed on the purchase of accommodations of short duration within the City of North Bay, which will generate revenue which may be shared with designated non-profit entities who promote local tourism as further described in Ontario Regulation 435/17;

**Now therefore, the Council of the Corporation of the City of North Bay enacts as follows:**

#### Definitions

1. For the purposes of this By-Law:

"Accommodation" means the use or possession or the right to the use or possession, for dwelling, lodging or sleeping purposes in a room or suite of rooms containing one or more beds or cots, whether in a hotel, motel, motor hotel, lodge, inn, resort, bed and breakfast or other establishment providing lodging, or in all or part of a dwelling unit and whether or not additional amenities, services or the right to use additional space in the establishment or dwelling unit are provided, where such rights are acquired for a purchase price;

"City" means the geographic area of The Corporation of the City of North Bay;

"Council" means the Council of The Corporation of the City of North Bay;

"Establishment Information Report" means the form established by the Treasurer and filed in accordance with s. 11 of this By-Law to provide information about an establishment which provides accommodation;

"MAT Remittance Report" means the form established by the Treasurer for reporting Municipal Accommodation Tax collected and to be paid to the City for a reporting period, in accordance with ss. 12 to 15 of this By-Law ;

"Municipal Accommodation Tax" (hereinafter referred to as "MAT") means the tax imposed under this By-Law and where applicable, includes MAT assessed by the Treasurer;

"Person" includes an individual, a sole proprietorship, a partnership, an unincorporated association, a trust and a corporation;

"Provider" means a person that sells, offers for sale, or otherwise provides accommodation, and includes agents, hosts or others who sell, offer for sale by any means, including through an on-line platform or otherwise provide accommodation;

"Purchaser" means a person who, for a purchase price, uses, possesses or has the right to the use or possession of any accommodation;

"Purchase Price" means the price for which accommodation is purchased, and where applicable, any other consideration accepted by the Provider in return for the accommodation and includes all fees and charges for additional occupants, for provision of additional beds or cots, and unless separately itemized on the invoice, bill or similar document, all fees and surcharges for ancillary services including food, beverages, entertainment, internet usage, telephone usage and similar charges, but purchase price does not include harmonized sales tax, or a cancellation fee;

"Treasurer" means the person appointed by Council from time to time as the Treasurer for the City and includes his or her authorized designate; and

"User Fees By-Law" means the City's User Fees By-Law 2015-023 as amended or replaced from time to time.

### **Severability / Conflict**

2. If any provision or part of a provision of this By-Law is declared by a court of competent jurisdiction to be illegal or inoperative in whole or in part, or inoperative in particular circumstances, such provision or part of the provision shall be deemed to be severable, and the balance of the By-Law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

### **Administration / Delegation**

3. The Treasurer is delegated the authority to implement and administer this By-Law, to collect the MAT and to take all actions and make all decisions required of the Treasurer under this By-Law. Without limiting the generality of the foregoing, the Treasurer is delegated the authority to:
  - (1) establish and amend from time to time, such interpretation guidelines, protocols, procedures, forms, documents and agreements, as the Treasurer may determine are required to implement and administer this By-Law and to collect the MAT;
  - (2) perform all administrative functions and conduct all enquiries, audits, assessments, approvals, referred to herein and those incidental to and necessary for the due administration, implementation and enforcement of this By-Law and collection of monies owing hereunder and authorize refunds in accordance with this By-Law;
  - (3) authorize, establish terms of and sign any repayment agreements provided for herein and any ancillary or related documents, and to amend, extend or terminate or otherwise administer or enforce such agreements; and
  - (4) carry out all duties assigned to the Treasurer under this By-Law.
4. The Treasurer may delegate the performance of any one or more of his or her functions under this By-Law to one or more persons from time to time as the occasion requires and may impose conditions upon such delegation and may revoke any such delegation. The Treasurer may continue to exercise any function delegated during the delegation.
5. The Treasurer may enter into agreements with another person or entity providing for

the collection of taxes pursuant to this By-Law, and the administration and enforcement of this By-Law, and the agreement may authorize the person or entity to collect taxes, administer and enforce the By-Law on the City's behalf.

6. Except as expressly provided to the contrary in this By-Law, the decisions of the Treasurer are final.

### **MAT Imposed**

7. Except as provided in s. 8 of this By-Law, every Purchaser shall, at the time of paying for accommodation, pay to the Provider, MAT in the amount of four (4%) per cent of the purchase price of any accommodation provided to the Purchaser for a continuous period of less than 30 nights.

### **Exemptions**

8. Despite s. 7 of this By-Law, the MAT imposed under this By-Law does not apply to:
  - (1) the Crown, any agency of the Crown in right of Ontario or any authority, board, commission, corporation, office or organization of persons a majority of whose directors, members or officers are appointed or chosen by or under the authority of the Lieutenant Governor in Council or a member of the Executive Council;
  - (2) any board as defined in s. 1(1) of the *Education Act*, RSO 1990, c E.2;
  - (3) any university in Ontario or any college of applied arts and technology and post-secondary institution in Ontario whether or not affiliated with a university, the enrolments of which are counted for purposes of calculating annual operating grants entitlements from the Crown;
  - (4) any hospital referred to in the list of hospitals and their grades and classifications maintained by the Minister of Health and Long-Term Care under the *Public Hospitals Act*, RSO 1990, c P.40 and every private hospital operated under the authority of a license issued under the *Private Hospitals Act*, RSO 1990, c P.24;
  - (5) any long-term care home as defined in s. 2(1) of the *Long Term Care Homes Act, 2007*, SO 2007, c 8;
  - (6) any retirement home as defined in the *Retirement Homes Act, 2010*, SO 2010, c 11;
  - (7) any home for special care within the meaning of the *Homes for Special Care Act*, RSO 1990, c H.12;
  - (8) any non-profit hospice occupying land for which there is an exemption from taxation determined in accordance with s. 23.1 of Ontario Regulation 282/98 made under the *Assessment Act*, RSO 1990, c A.31;
  - (9) any person or entity as prescribed by regulation under the *Municipal Act, 2001*, SO 2001, c 25 as exempt from payment of Municipal Accommodation Tax;
  - (10) any treatment centre that receives provincial aid under the *Ministry of Community and Social Services Act*, RSO 1990, c M.20; or
  - (11) Accommodation provided:
    - (a) in a house of refuge or lodging for the reformation of offenders;

- (b) by charitable or not-for-profit corporations or by the City or its contractors or agents for the purpose of providing or operating a shelter or emergency shelter for the relief of the poor; or for the benefit of persons who are fleeing situations of physical, financial, emotional or psychological abuse; or for other persons who are suffering from homelessness;
- (c) as a tent site or a trailer site;
- (d) by an employer to its employees in premises operated by the employer; or
- (e) in premises owned or operated by the City of North Bay.

### **Invoice to Purchaser**

9. Every Provider shall include on every bill, receipt, invoice or similar document for the purchase of accommodation, a separate item identified as Municipal Accommodation Tax showing the rate at which the MAT is calculated and the amount of the MAT imposed and collected.

### **Duty to Collect**

10. Every Provider shall collect the MAT from the Purchaser at the time the accommodation is paid for.

### **Duty to Report / Duty to Remit**

11. Every Provider shall file an Establishment Information Report with the City annually, on a date established by the Treasurer.
12. Except as provided to the contrary in s. 13 of this By-Law, every Provider shall:
- (1) on or before the 15th day of each month, file a MAT Remittance Report with the City, setting out the MAT required to be charged and collected in the prior month; and
  - (2) within 15 days after the MAT Remittance Report due date, pay to the City an amount equal to the MAT required to be charged to and collected from Purchasers during the period reported in the MAT Remittance Report. If the due date for payment falls on a Saturday, Sunday or statutory holiday, then payment is due on the following business day.
13. Despite s. 12 of this By-Law, a Provider may apply in writing, in accordance with guidelines established by the Treasurer, for quarterly filing of MAT Remittance Reports and payment of MAT charged and collected. If quarterly filing is approved by the Treasurer and while any such approval is in good standing, the Provider shall:
- (1) on or before January 15, April 15, July 15 and October 15, in each year, file a MAT Remittance Report with the City setting out the MAT required to be charged and collected for the three month period prior to the month in which the MAT Remittance Report is due; and
  - (2) within 15 days after the MAT Remittance Report due date, pay to the City an amount equal to the MAT required to be charged and collected for the period reported in the MAT Remittance Report.
14. The Provider shall ensure that the MAT Remittance Reports required under s. 12 or s. 13 of this By-Law are:
- (1) in the form established by the Treasurer from time to time;
  - (2) filed with the City in the manner established by the Treasurer from time to time;
  - (3) filed with the City in the timelines established in this By-Law;
  - (4) fully completed when submitted; and

- (5) signed by an authorized officer to confirm the accuracy of the report.
15. Every Provider shall file a MAT Remittance Report with the City for a reporting period whether or not any MAT was collected during the reporting period.

#### **Assessment - Failure to File Remittance Report or to Pay**

16. Where a Provider has filed a MAT Remittance Report, but failed to pay all or part of the MAT owing to the City, the Treasurer may assess the amount of MAT payable to the City based on the MAT Remittance Report.
17. Where a Provider has failed to file a MAT Remittance Report, the Treasurer may assess the amount of MAT payable to the City by multiplying the MAT rate of 4% by the total of:
  - (1) the average daily purchase price for accommodations for the prior year, as disclosed in the Establishment Information Report filed by the Provider, or where this is not available, as determined by or estimated by the Treasurer; multiplied by
  - (2) the number of accommodations the Provider has available for purchase as disclosed in the Establishment Information Report filed by the Provider, or where this is not available, as determined by or estimated by the Treasurer; multiplied by
  - (3) the number of days in the period being assessed by the Treasurer.
18. The Treasurer shall mail an invoice to the Provider setting out the amount of MAT assessed by the Treasurer under s. 16 or s. 17, as payable by the Provider, and in the case of an invoice related to an amount assessed under s. 17, advise the Provider of the rights to re-assessment under s. 19 of this By-Law. The Provider shall pay the assessed amount to the City within 14 days from the date of the invoice whether or not the assessed amount was actually collected by the Provider and whether or not the assessment reflects the amount of MAT actually payable.
19. Despite s. 18 of this By-Law, where the Treasurer has assessed MAT in accordance with s. 17, the Provider may, within two months of the date of the invoice sent pursuant to s. 18, apply to the Treasurer in writing for a re-assessment of the MAT owing to the City for the assessed period. No request for a re-assessment will be considered by the Treasurer unless the Provider also:
  - (1) submits or has submitted a completed MAT Remittance Report for the period to which the assessment applied;
  - (2) pays or has paid the amount of the MAT assessed by the Treasurer, in accordance with s. 17 and set out in the invoice sent in accordance with s. 18; and
  - (3) pays or has paid any applicable interest or penalties on the amount of MAT assessed by the Treasurer under s. 28 of this By-Law.
20. Upon a re-assessment by the Treasurer based on the MAT Remittance Report for the period, the Treasurer shall adjust the City records if necessary, to reflect the reassessment of the MAT and of any interest or penalties thereon.
21. In the event that the re-assessment by the Treasurer reveals an overpayment by the Provider, the Treasurer will notify the Provider in writing and, in the discretion of the Treasurer, will provide a refund of the amount overpaid or a credit against future obligations to pay MAT. No interest shall be paid on the amount of the overpayment.
22. Where a Provider who is entitled to do so, fails to apply for a re-assessment in accordance with s. 19, the amount assessed by the Treasurer in accordance with s.

17 shall be final, except as may be determined to the contrary by way of audit conducted pursuant to this By-Law.

### **Audit and Inspection**

23. Every Provider shall keep books of account, records and documents sufficient to furnish the City or its agent with the necessary particulars, as of any point in time, to verify the accuracy and completeness of the amount of MAT collected and paid to the City.
24. Every Provider shall retain such books of account, records and documents required under s. 23 of this By-Law, for a period of no less than 7 years.
25. The City or its agent may inspect and audit all books, documents, transactions, records and accounts of the Provider and require the Provider to produce copies of any documents or records required to be kept for the purposes of administering and enforcing this By-Law.

### **Adjustment by Treasurer - Result of Audit**

26. Where the Treasurer determines as a result of an audit of the Provider's records that MAT which accrued within a period of two years prior to the date of the audit, was not reported and paid by that Provider in accordance with this By-Law, the Treasurer may make a determination of the amount of MAT properly payable for that period, adjust the City records appropriately to reflect the adjustment, and notify the Provider in writing:
  - (1) of the period for which MAT was adjusted;
  - (2) of the basis for the adjustment;
  - (3) of the amount of MAT actually paid and the amount payable for the period of adjustment;
  - (4) of the amount now owing to the City or overpaid to the City; and
  - (5) where applicable, that payment of any amount owing to the City is due within 15 days of the date of the notice; and
27. In the event that an audit reveals an overpayment, the Treasurer, in his or her discretion will provide a refund of the amount of MAT overpaid or a credit against future obligations to pay MAT. No interest shall be paid on the amount of the overpayment.

### **Interest / Penalty**

28. Interest at the rate set out in the User Fees By-Law as the rate payable on overdue amounts owing to the City, shall be charged on the amount of any MAT owing to the City under this By-Law including any MAT assessed under s. 16 or s. 17 or adjusted under s. 26, from the day following the date on which the MAT was due and payable up to and including the date on which the MAT is paid in full.
29. Where the amount of any MAT owing to the City is determined in accordance with s. 26, interest shall start to accrue from the invoice due date.
30. The Provider shall pay any fee or charge established in accordance with the User Fee By-Law for any late filings, dishonored payments or other matters.

### **Application for Refund**

31. A Provider who has paid an amount as MAT which was not payable under this By-Law and not addressed through a re-assessment in accordance with s. 21 or through an adjustment in accordance with s. 27 of this By-Law, may, within one year from the date of filing the MAT Remittance Report in question, apply in writing to the Treasurer to review the application for a refund, accompanied by the fee set out in the User Fees By-Law, and where a form has been established by the

Treasurer, shall use the prescribed form. The onus of proof shall be on the Provider, who shall provide to the Treasurer such information as the Provider intends to rely on in support of the application. No application for a refund will be accepted if the applicant is not current in filing of MAT Remittance Reports.

32. The Treasurer shall review the application, the supporting material provided by the applicant and any other information available to the Treasurer, make a determination of whether all or part of an amount of MAT was wrongly paid, and notify the applicant of his or her decision in writing.
33. Where, as a result of the review in s. 32, the Treasurer is satisfied:
  - (1) that there has been an overpayment of MAT, the Treasurer will notify the Provider and in his or her discretion will refund the overpaid amount or provide a credit against future obligations to pay MAT, and no interest shall be paid on the amount of the overpayment; or
  - (2) that no overpayment has been made, the Treasurer shall notify the Provider of the decision in writing and shall provide particulars for disallowing all or part of the refund claimed.
34. Any refund authorized under s. 33 of this By-Law shall be limited to the amount overpaid by the Provider during the one year period prior to the date of the application and while the Provider owned the establishment which provided the accommodation.

### **Collection**

35. All MAT, including MAT assessed under s. 16 or s. 17 or adjusted under s. 26 and related penalties and interest that are past due shall be deemed to be in arrears and a debt owing to the City. The Treasurer is authorized to take any one or more steps available to the City to collect any such amount including without limitation:
  - (1) adding the amount to the tax roll for any real property in the City registered in the name of the Provider to be collected in like manner as property taxes and constituting a lien upon the lands but, pursuant to s. 400.4 of the Act, such lien shall not have priority lien status and such lien shall not have a higher priority than it would otherwise have in law in relation to other claims, liens or encumbrances;
  - (2) bringing an action in the name of the City for the recovery of the amount in the court of appropriate jurisdiction;
  - (3) referring the collection of the amount to a collection agency; and
  - (4) exercising any other remedy available pursuant to the Act, or otherwise available at law.
36. The remedies provided for the recovery and enforcement of the payment of any amount required under this By-Law are in addition to any other remedies existing at law.

### **Repayment Agreements**

37. Where the Treasurer, in his or her discretion, determines that it is in the best interests of the City to do so, the Treasurer is authorized to enter into a repayment arrangement with any Provider, providing for terms of payment of any MAT and interest and penalties thereon, which were not paid in accordance with this By-Law, on such terms as may be established by the Treasurer. While the repayment agreement is in good standing no further collection efforts shall be taken, despite s. 35. The Treasurer is not obligated to authorize a repayment agreement.
38. The repayment agreement shall terminate automatically upon breach of any provision thereof.

39. Interest shall continue to accrue on the amount of MAT outstanding during the term of the repayment agreement.

### **False Statement**

40. No person shall make a false, inaccurate or intentionally misleading statement or representation in any document, statement or request provided for by this By-Law.

### **No Interference**

41. No person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this By-Law.

### **Offence**

42. Pursuant to s. 429 of the Act, every offence committed under this By-Law is designated as a continuing offence.
43. Every person who contravenes any provision of this By-Law is guilty of an offence and on conviction is liable:
- (1) to a minimum fine of \$500 and a maximum fine of \$100,000; and
  - (2) for each day or part of a day that the offence continues, to a minimum fine of \$500 and a maximum fine of \$10,000 and, notwithstanding subsection (1), the total of all of the daily fines for the offence is not limited to \$100,000.
44. In addition to any other remedy and to any penalty imposed by this By-Law, when a person is convicted of an offence under this By-Law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted.
45. Every person who contravenes an order made pursuant to this By-Law is guilty of an offence on conviction is liable to a fine pursuant to s. 43 of this By-Law.
46. The levying and payment of any fine as provided for by this By-Law shall not relieve a person from the necessity of compliance with the obligations under this By-Law or from the obligation for payment of the MAT or any interest or penalty imposed by s. 28 of this By-Law or such other penalties as may be provided for under the Act.

### **Confidential Information**

47. All information submitted to and collected by the City, will, except as otherwise provided in this section, be available for disclosure to the public in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c. M.56 (*MFIPPA*).
48. In the event that any person is submitting information to the City or to the Treasurer in any form, as required under this By-Law, where such information is confidential or proprietary or otherwise may be exempt from disclosure under the *MFIPPA*, the person submitting the information shall so identify that information upon its submission to the City or the Treasurer and shall provide sufficient details as to the reason for its purported exemption from disclosure.

### **Short Title**

49. This By-Law may be referred to as the "Municipal Accommodation Tax By-Law."



**Effective**

50. This By-Law shall come into full force and effect on February 1, 2019.

Read a First Time in Open Council this 18<sup>th</sup> day of, December 2018.

Read a Second Time in Open Council this 18<sup>th</sup> day of, December 2018.

Read a Third Time in Open Council and Enacted and Passed this 18th day of December 2018.

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Mayor Allan McDonald

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City Clerk Karen Mclsaac